

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

LeRoy Koppendrayner  
Marshall Johnson  
Ken Nickolai  
Thomas Pugh  
Phyllis A. Reha

Chair  
Commissioner  
Commissioner  
Commissioner  
Commissioner

In the Matter of the Application to the  
Minnesota Public Utilities Commission for a  
Route Permit for the Big Stone Transmission  
Project in Western Minnesota

ISSUE DATE: January 17, 2006

DOCKET NO. ET-6131,ET-2, ET-6130,  
ET-10, ET-6444, E-017,ET-9/TR-05-1275

NOTICE OF HEARING

**PROCEDURAL HISTORY**

On December 9, 2005, an application for a Route Permit for High Voltage Transmission Lines in Western Minnesota was submitted by Otter Tail Power Company, Central Minnesota Municipal Power Agency, Great River Energy, Heartland Consumers Power District, Montana-Dakota Utilities Company, Southern Minnesota Municipal Power Agency, and Western Minnesota Municipal Power Agency (collectively, the Applicants).

The Applicants sought a Route Permit designating a route and authorizing construction of two transmission lines in Minnesota from the existing Big Stone 230 kV Substation in South Dakota to termination points in Minnesota: 1) one line would run approximately 48 miles (43 miles in Minnesota), north and east from the Big Stone Plant in Big Stone City, South Dakota, to Morris, Minnesota, and 2) a second line would run 90 miles (55 miles in Minnesota), south from the Big Stone Plant within South Dakota, then east to Canby, Minnesota, and on to Granite Falls, Minnesota.

On December 20, 2005, the Commission met to consider this matter.

On December 21, 2005, the Commission issued an Order accepting as substantially complete the Applicants' December 9, 2005 application, authorizing the Minnesota Department of Commerce (the Department) to initiate the procedural actions required by Minnesota Rules, Parts 4400.1025 to 4400.1900, authorizing the Department to name a public adviser for the project, and instructing the Department to proactively consult and inform affected local units of governments and enlist their advice on the scope of the Environmental Impact Statement (including alternative routes to evaluate in the EIS), as an alternative to the establishment of an Advisory Task Force. The Order also advised that the Commission would be issuing a separate Order referring the matter to the Office of Administrative Hearings (OAH).

## **FINDINGS AND CONCLUSIONS**

### **I. Jurisdiction**

The Commission has jurisdiction over applications for route permits for the transmission project at issue in this matter, under Minn. Stat. § 116C.57. Subdivision 2 of that statute states:

**Route permit.** No person may construct a high voltage transmission line without a route permit from the board<sup>1</sup>. A high voltage transmission line may be constructed only along a route approved by the board.

And Subdivision 2a of that statute states:

Any person seeking to construct a large electric power generating plant or a high voltage transmission line must apply to the board<sup>2</sup> for a site or route permit.

Consideration of the Applicants' Route Permit Application will proceed in accordance with the requirements of Minn. Stat. §§ 116C.51 and Minn. Rules, Chapter 4400.

### **II. Referral to Office of Administrative Hearings**

The Commission finds that it cannot satisfactorily resolve all questions regarding the reasonableness of the proposed route on the basis of the Applicants' filing. The Commission will therefore refer the matter to the Office of Administrative Hearings for contested case proceedings.

The Administrative Law Judge assigned to this matter will conduct hearings as described in this Notice and submit a Report to the Commission.<sup>3</sup> Following receipt of the Administrative Law Judge's report, the Commission will proceed to make its final decision in accordance with Minn. Stat. Chapters 14 and 116C.<sup>4</sup>

---

<sup>1</sup> As of July 1, 2005, the Legislature has transferred jurisdiction to issue Site Permits from the Environmental Quality Board (the "board" referred to in Minn. Stat. §§ 116C.51 - 116C.69, subd. 2) to the Commission. See 2005 Minn. Laws, c. 97, art. 3, § 17.

<sup>2</sup> See Footnote 1.

<sup>3</sup> Minn. Rules, Part 1405.2400.

<sup>4</sup> Minn. Rules, Part 1405.2500. See also Minn. Rules, Part 4400.1900.

### **III. Administrative Law Judge**

The Administrative Law Judge assigned to this case is Steve M. Mihalchick. His address and telephone number are as follows: Office of Administrative Hearings, Suite 1700, 100 Washington Square, Minneapolis, Minnesota 55401-2138; 612/349-2544.

### **IV. Hearings**

#### **A. Prehearing Conference**

A prehearing conference will be held in this case on Wednesday, February 8, 2006, at 9:00 a.m. in the Small Hearing Room at the offices of Minnesota Public Utilities Commission, 121 7th Place East, Suite 350, St. Paul, Minnesota 55101.

Pursuant to Minn. Rules, Part 1405.1100, the purpose of the prehearing conference is to simplify the issues to be determined, to obtain stipulations to foundation for testimony or exhibits, to discuss schedules for hearings and other procedural events, and to resolve other matters that may be necessary or appropriate. Potential interveners, and other interested persons, may attend the prehearing conference.

The administrative law judge may require the parties to file a prehearing statement prior to the prehearing conference which shall contain such items as the administrative law judge deems necessary to promote a useful prehearing conference. A prehearing conference shall be an informal proceeding conducted expeditiously by the Administrative Law Judge. Agreements on the simplification of issues, amendments, stipulations, or other matters may be entered on the record or may be made the subject of an order by the administrative law judge.

#### **B. Public Hearing/Contested Case Hearing**

A public hearing following the contested case format prescribed by Minnesota statutes<sup>5</sup> and rules<sup>6</sup> will be held in this matter. The hearing will include cross-examination by parties, questioning by interested persons, and direct testimony or comments from the public. Conduct of the hearing is addressed more fully below in Section V (Procedural Outline), below.

---

<sup>5</sup> Minn. Stat. Chapter 14.

<sup>6</sup> Minn. Rules, Chapter 1405.

The date, place, and time of the public hearing cannot be determined at this time. Pursuant to Minn. Rules, part 4400.1800 and 1400.1350, subp. 3,<sup>H</sup> the public hearing/contested case hearing is to held **after** the Department has prepared an Environmental Impact Statement (EIS) on this proposed project pursuant to Minn. Rules, 4400.1700. At this time the completion date for the EIS it is not determinable with enough certainty to warrant issuing notice of a fixed date for the public hearing. In addition, whether and to what extent the public hearing in this routing matter can be combined with the contested case hearing in the certificate of need proceeding is unknown at this time and will be considered at the prehearing conference noted above, which will be held jointly with the prehearing conference for the certificate of need proceeding.

Accordingly, since this Order is transferring jurisdiction over this matter to the Office of Administrative Hearings for purposes of conducting the contested case proceeding, the date, time, and place of the public hearing or hearings will be determined by the Administrative Law Judge assigned to this matter by the Office of Administrative Hearings in light of the developing circumstances of this matter and will be duly noticed as required by applicable statute and rule.<sup>7</sup>

## **V. Public Participation**

### **A. Right to Counsel and to Present Evidence**

In these proceedings, parties may be represented by legal counsel, or by a person of their choice, or they may represent themselves. They have the right to present evidence, conduct cross-examination, and make written and oral argument. Under Minn. Rules, part 1405.1300, they may obtain subpoenas to compel the attendance of witnesses and the production of documents.

Parties should bring to the hearing all documents, records, and witnesses necessary to support their positions.

### **B. Public Adviser**

The Commission has authorized the Department to name a public adviser for the project. The public adviser is someone who is available to answer questions from the public about the permitting process. In this role, the public adviser may not act as an advocate on behalf of any person. The Department has named Deborah Pile, Manager of the Department's Energy Facilities

---

<sup>7</sup> Minn. Rules, Part 4400.1800 (Contested Case Hearing), subd. 1 and Minn. Stat. § 116C.57 (Public Hearing), subd. 2d.

Permitting Unit, to serve as the Public Adviser for this project. Her address is Minnesota Department of Commerce, 85 - 7th Place East, Suite 500, St Paul, MN 55101-2198 and her phone number is 651-297-2375.

### **C. Commission's Representative; Advice Regarding Procedures**

The Commissions' representative in this matter is Robert Cupit, Senior Facility Planner, Minnesota Public Utilities Commission, 121-7<sup>th</sup> Place East, Suite 350, St. Paul, Minnesota 55101-2147, (651) 201- 2257.

The member of the Attorney General's staff who may be contacted for advice on matters dealing with Commission procedures is Lisa A. Crum, Assistant Attorney General, 1100 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101, (651) 296-1408.

### **D. Availability of Materials**

Interested persons may review all materials including all prefiled testimony at the Minnesota Department of Commerce, 85 - 7th Place East, Suite 500, St. Paul, MN 55101-2198 as soon as they have been filed. To arrange a viewing of these materials, interested persons may contact the Public Adviser, Deborah Pile, at the Minnesota Department of Commerce or by phone at 651-297-2375.

### **E. Parties, Persons, and Intervention**

Currently, the parties to this case are the Applicants.<sup>8</sup> The name and address of the person designated to receive all notices on behalf of the Applicants: Dean Pawlowski, Big Stone Transmission Project Manager, P.O. Box 496, 215 South Cascade Street, Fergus Falls, MN 56537.

Other persons<sup>9</sup> who wish to be granted permission by the Administrative Law Judge to intervene in this matter, must do so pursuant to Minn. Rules, Part 1405.0900. Subpart 1 of that rule prescribes the timing and contents of a petition to intervene. Subpart 2 prescribes the timing and content of any objection to the petition and Subpart 3 sets forth the standards for granting, denying, or requiring consolidation of similar petitions.

---

<sup>8</sup> Minn. Rules, part 1405.0200, subp. 3 defines "party" as the applicant, persons proposing routes or sites which the board orders to be considered pursuant to Minnesota Statutes, chapter 116C and rules adopted thereunder, and persons granted permission to intervene pursuant to part 1405.0900. State agencies, participating department staff, and citizen committees appointed by the Commission must intervene to attain party status.

<sup>9</sup> Minn. Rules, part 1405.0200, subp. 4 defines "person" as an individual, partnership, joint venture, private or public corporation, association or society, firm, public service company, cooperative, political subdivision, municipal corporation, governmental unit or agency, public utility district, or any other entity, public or private, however organized.

The hearing process established under Minn. Rules Chapter 1405 is designed to facilitate public participation, and persons need not intervene as parties to participate. All public participants have significant procedural rights, including, but not limited to, the right to be present throughout the proceeding, to offer direct testimony in oral or written form, to question all persons who testify, and to submit comments to the Administrative Law Judge and the Commission.

Persons who intervene and are granted party status have additional rights and responsibilities, including, but not limited to, the right to object to another's petition for intervention within seven days of service of the petition, the rights to submit direct testimony and conduct cross-examination of other parties' witnesses in the first stage of any two-stage hearing conducted by the administrative law judge pursuant to Minn. Rules, Part 1405.1500, subp. 2, and the responsibilities to submit pre-filed testimony, comply with discovery requests, produce witnesses, file briefs, and serve all documents on all other parties.

The description of rights in this section is summary in nature, as required by Minn. Rules, part 1405.0500, subp. 1, I, and is not intended to be comprehensive. Review Chapter 1405 to identify the scope of rights and authority to act given "persons" or restricted to "parties" under the various provisions of that Chapter.

## **VI. Issues to be Addressed**

Parties shall specifically and thoroughly address the requirements of Minn. Stat. §§ 116C.51 to 116C.69 and Minn. Rules, Chapter 4400.

The parties may also raise and address other issues relevant to the Applicants' proposed route.

## **VII. Procedural Outline**

### **A. Hearing Procedure: Controlling Statutes and Rules**

Hearings in this matter will be conducted in accordance with the Administrative Procedure Act, Minn. Stat. §§ 14.57-14.62 and Minn. Rules, parts 1405.0200 to 1405.2800. Regarding any issue on which Chapter 1405 is silent, the provisions of Minn. Rules, parts 1400.5100 to 1400.8400 regarding contested cases shall apply and, to the extent that they are not superseded by those rules, the Commission's Rules of Practice and Procedure, Minn. Rules, parts 7829.0100 to 7829.3200.

Hearings may be recessed and reset by the Administrative Law Judge pursuant to Minn. Rules, Parts 1405.1400 to 1405.2300.

### **B. Hearing Procedures; Applicable Rules; Availability**

Hearings in this matter will be conducted in accordance with the Administrative Procedure Act, Minn. Stat. §§ 14.57-14.62 and Minn. Rules, parts 1405.0200 to 1405.2800. Regarding any issue on which Chapter 1405 is silent, the provisions of Minn. Rules, parts 1400.5100 to 1400.8400 regarding contested cases shall apply and, to the extent that they are not superseded by those rules, the Commission's Rules of Practice and Procedure, Minn. Rules, parts 7829.0100 to 7829.3200.

Copies of these rules and statutes may be purchased from the Print Communications Division of the Department of Administration, 660 Olive Street, St. Paul, Minnesota 55155; (651) 297-3000. These rules and statutes also appear on the State of Minnesota's website at [www.revisor.leg.state.mn.us](http://www.revisor.leg.state.mn.us).

The Office of Administrative Hearings conducts contested case proceedings in accordance with the Minnesota Rules of Professional Conduct and the Professionalism Aspirations adopted by the Minnesota State Bar Association.

### **C. Accommodations for Disabilities; Interpreter Services**

At the request of any individual, this agency will make accommodations to ensure that the hearing in this case is accessible. The agency will appoint a qualified interpreter if necessary. Persons must promptly notify the Administrative Law Judge if an interpreter is needed.

## **VIII. Time Constraints**

The Commission is required to make a final decision on a route permit application within one year after the Commission's decision that an application is complete.<sup>10</sup> The Commission's Order finding the Applicants' application complete was issued December 21, 2005. The rule authorizes the Commission to extend this time limit for up to three months for good cause or upon agreement of the Applicants.

The Commission asks the Office of Administrative Hearings to conduct contested case proceedings in light of these time constraints and requests that the Administrative Law Judge submit his final report within eight months of the Commission's December 21, 2005 finding the Applicants' Route Permit Application complete.

## **IX. Application of Ethics in Government Act**

The lobbying provisions of the Ethics in Government Act, Minn. Stat. §§ 10A.01 *et seq.*, apply to powerline siting cases. Persons appearing in this proceeding may be subject to registration, reporting, and other requirements set forth in that Act. All persons appearing in this case are urged to refer to the Act and to contact the Campaign Finance and Public Disclosure Board, telephone number (651) 296-5148, with any questions.

## **X. Ex Parte Communications**

Restrictions on *ex parte* communications with Commissioners and reporting requirements regarding such communications with Commission staff apply to this proceeding from the date of this Order. Those restrictions and reporting requirements are set forth at Minn. Rules, parts 7845.7300-7845.7400, which all parties are urged to consult.

---

<sup>10</sup> Minn. Stat. § 116C.57, subd. 7 and Minn. Rules, Part 4400.1900.

**ORDER**

1. The Commission hereby refers this case to the Office of Administrative Hearings for contested case proceedings, as set forth above.
2. A prehearing conference shall be held on Wednesday, February 8, 2006, at 9:00 a.m. in the Small Hearing Room at the offices of Minnesota Public Utilities Commission, 121 7th Place East, Suite 350, St. Paul, Minnesota 55101.
3. The date, time, and place of the public hearing will be set by the Administrative Law Judge and duly noticed in due course.
5. All hearings, including the prehearing conference, may be recessed and reset by the Administrative Law Judge pursuant to Minn. Rules, Part 1405.1400 to 1405.2300.
6. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

(S E A L)

This document can be made available in alternative formats (i.e., large print or audio tape) by calling (651) 297-4596 (voice), or 1-800-627-3529 (MN relay service).